



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0293]

RIN 1625-AA11

Regulated Navigation Area; Slip 4 Early Action Area Superfund Site, Lower Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) on a portion of the Lower Duwamish Waterway in Seattle, Washington. The RNA will protect the riverbed in the U.S. Environmental Protection Agency (EPA)'s Slip 4 Early Action Area (EAA). This RNA would prohibit activities that could disrupt the integrity of the engineered sediment and slope caps that have been placed within the Slip 4 EAA. These activities include vessel grounding, anchoring, dragging, trawling, spudding or other such activities that would disturb the riverbed. It will not affect transit or navigation of this area.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0293]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LTJG Johnny Zeng, Coast Guard Sector Puget Sound, Waterways Management Division, U.S. Coast Guard; telephone (206) 217-6175, e-mail SectorPugetSoundWWM@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Regulatory History and Information

The Coast Guard received notice from the U.S. EPA on

February 28, 2013, requesting the establishment of a RNA for Slip 4 EAA located in the Lower Duwamish Waterway Superfund Site, Seattle, Washington. This request was received as a result of the need to protect the riverbed in the Lower Duwamish Waterway (LDW) from activities that could disrupt the integrity of the engineered sediment and slope caps that have been placed within the Slip 4 EAA to isolate underlying contaminated sediments.

The LDW was added to the U.S. EPA's National Priorities List (Superfund) in September 2001 because of hazardous substance contamination in sediments. Slip 4 was subsequently identified by the EPA and the Washington Department of Ecology as EAA within the LDW, based primarily on elevated concentrations of polychlorinated biphenyls (PCBs). Slip 4 EAA cleanup activities were conducted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), under U.S. EPA's non-time-critical removal action (NTCRA) authority. In May 2006, U.S. EPA issued an Action Memorandum containing its removal action decision for the Slip 4 EAA. The Slip 4 EAA removal action was conducted by the City of Seattle (City) under an administrative settlement agreement and order on consent (ASAO), CERCLA Docket No. 10-2006-0364.

The selected removal action required dredging, excavation, and offsite disposal of 17,202 tons of contaminated sediment,

shoreline, soil, and creosote-treated timber piles and other debris, and placement of engineered sediment and slope caps throughout the EAA (approximately 3.43 acres) to isolate residual sediment contamination within the EAA. In addition, the removal action included demolition and removal/recycling of a portion of an aging concrete pier and supporting piling on the northwest bank of the slip, and creation of two intertidal beach areas and other shallow-water areas to improve habitat conditions in the slip. Construction activities were initiated in October 2011 and completed in February 2012. A Removal Action Completion Report documenting the cleanup activities was completed and approved by the U.S. EPA in July 2012.

On April 22, 2014, an NPRM, Navigation Areas: Slip 4 EAA Superfund Site, Seattle, WA, was published. The Coast Guard received no comments on the NPRM and no requests for public meeting. No changes were made to the rule published in the NPRM.

#### B. Basis and Purpose

Coast Guard District Commanders are granted authority under 33 CFR 165.11 to regulate vessel traffic in areas with hazardous conditions. This rule is necessary to prevent disturbance of the Slip 4 EAA sediment and slope caps. Disruption of the caps may result in a hazardous condition and harm to the marine environment. As such, this RNA is necessary to protect the caps

and will do so by prohibiting maritime activities that could disturb or damage them. This RNA is similar to RNAs which protect other caps in the area. Enforcement of this RNA will be managed by Coast Guard Sector Puget Sound assets including Vessel Traffic Service Puget Sound through radar and closed circuit television sensors.

#### C. Discussion of Comments, Changes and the Final Rule

The Coast Guard is establishing a permanent RNA in the LDW to protect the sediment and slope caps in the Slip 4 EAA, Superfund Site (EPA ID No. WA0002329803). It will do so by restricting anchoring, dragging, trawling, spudding or other activities that could disrupt the integrity of the caps and the underlying contaminated sediments located in the RNA. No comments were received by the Coast Guard on this rule.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an

assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This expectation is based on the fact that the RNA established by the rule would encompass a small area that should not impact commercial or recreational traffic, and the prohibited activities are not routine for the designated areas.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to anchor, drag, dredge, trawl, spud, or disturb the riverbed in any fashion when this rule is in effect. The RNA

will not have a significant economic impact on small entities due to its minimal restrictive area and the opportunity for a waiver to be granted for any legitimate use of the riverbed.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This rule will not call for a new collection of information

under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.)).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any



one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This rule was determined to have potential tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it regulates navigation on waters subject to treaty fishing rights held by Indian Tribal Governments. The Coast Guard and EPA

consulted with the Muckleshoot and Suquamish Tribes. To accommodate treaty fishing activity in usual and accustomed places, which fall within the area covered by the sediment cap, the Coast Guard included an exception for treaty fishing activity by Indian Tribes holding such fishing rights.

#### 12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated navigation area which prevents activities which would disturb the riverbed within the areas outlined in this regulation. This rule is categorically excluded from further review under paragraph 34(g)

of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1338 to read as follows:

§ 165.1338 Regulated Navigation Area; Slip 4 Early Action Area Superfund Site, Lower Duwamish Waterway, Seattle, WA.

(a) Regulated Areas. The following areas are regulated navigation areas: All waters within the northern portion of

Slip 4 bounded by the shoreline and the southern boundary of the Early Action Area defined as the line beginning at a point on the shore at 47° 32' 08.47"N, 122° 19' 12.00"W; thence southeast to a point on the shoreline at 47° 32' 07.02"N, 122° 19' 09.23"W (Datum: NAD 1983/91).

(b) Regulations. (1) All vessels and persons are prohibited from grounding, anchoring, dragging, trawling, spudding, or otherwise contacting the riverbed within the designated regulated navigation area. Vessels may otherwise transit or navigate within this area in accordance with the Navigation Rules.

(2) The prohibition described in paragraph (b)(1) of this section does not apply to vessels or persons engaged in activities associated with remediation efforts in the superfund sites, provided that the Captain of the Port, Puget Sound (COTP), is given advance notice of those activities by the Environmental Protection Agency.

(3) The prohibition described in paragraph (b)(1) of this section does not apply to vessels or person engaged in fishing activities pursuant to fishing rights held by treaty with the United States.

(c) Waivers. Upon written request stating the need and proposed conditions of the waiver, and any proposed precautionary measures, the COTP may authorize a waiver from this section if the COTP determines that the activity for which the waiver is sought can take place without undue risk to the remediation efforts described in paragraph (b)(1) of this section. The COTP will consult with EPA in making this determination when necessary and practicable.

Dated: October 2, 2014

R.T. Gromlich  
Rear Admiral, U. S. Coast Guard  
Commander, Thirteenth Coast Guard District

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Date: 10/21/2014]